

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

June 12, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

SUBJECT: RECOMMENDATION TO AUTHORIZE EXTENSION OF CONTRACT 56304 BETWEEN THE BOARD OF LAND AND NATURAL RESOURCES AND ARNOLD T. OKUBO AND ASSOCIATES, INC.

PURPOSE Authorize exercising of contract option to extend Contract 56304 and authorize the Chairperson to sign supplemental contracts and necessary documents to exercise the option and address unforeseen conditions.

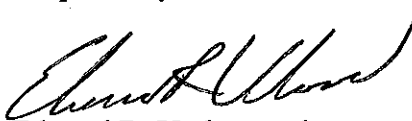
REMARKS Contract No. 56304 was approved by the Board of Land and Natural Resources on July 28, 2006 and the contract was executed on July 20, 2007 and expires on June 30, 2009. The contract is to provide engineering services on as "as-required" basis. The current scope of the contract utilized CIP funding for design for loading dock repairs and improvement at the Kawaihae Small Boat Harbor. The current scope of the contract requires the consultant to also provide services during construction of the loading dock improvements. The extension of the contract beyond June 30, 2009 is required due to construction contract delays that will result in the contract completion in June 2010.

Contract 56304 includes 2 options to extend the contract for 3 years. However, the Deputy Attorney General advised that Board of Land and Natural Resources must approve the extension. The attached memorandum provided the guidance. The memorandum also stated that the scope is not a specific capital improvement project included in the submittal that was approved by the Board on July 28, 2006. The current scope is for repairs and improvements to loading docks at Kawaihae Small Boat Harbor which was included in the approved submittal list.

RECOMMENDATION

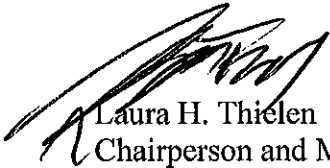
- 1) That the Board approve and authorize extension of Contract 56304.
- 2) That the Board authorize the Chairperson to sign the Supplemental Contract and necessary documents pertaining to extension of the Contract.
- 3) That the Board authorize the Chairperson, subject to review and approval by the Attorney General, to enter into supplemental contracts to address unforeseen conditions and sign the necessary documents to implement the additional work with the consultant.

Respectfully submitted,



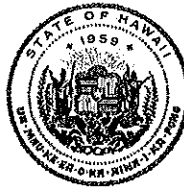
Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen
Chairperson and Member

LINDA LINGLE
GOVERNOR



MARK J. BENNETT
ATTORNEY GENERAL

LISA M. GINOZA
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
LAND TRANSPORTATION DIVISION
ROOM 300, KEKUANAO'A BUILDING
465 SOUTH KING STREET
HONOLULU, HAWAII 96813
FAX No. (808) 587-2999

June 2, 2009

MEMORANDUM

To: Laura H. Thielen, Chairperson
Attn: Edward R. Underwood, Administrator
Eric Yuasa (x 7-0122)
Division of Boating and Ocean Recreation
Department of Land and Natural Resources

From: Colin Lau, Deputy Attorney General 
Land/Transportation Division

Re: Approval as to form for Supplemental Contract No. 1 to Contract No. 56304
between DLNR & Arnold T. Okubo & Associates, Inc.; extension of contract

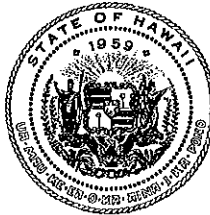
According to your accompanying documents, Contract No. 56304 was approved by the Board on July 28, 2006, and expires on June 30, 2009. Although the contract allows for further extensions of 3 years each, the extension needs to be approved by the Land Board. I'm returning Supplemental Contract No. 1 to Contract No. 56304 to you for submission to the Land Board for approval.

The contract is to provide engineering services on an "as-required" basis. However, the approved funding source was for CIP projects re: design and construction of a sewer system, loading dock, and utilities improvements at the Kawaihae Small Boat Harbor facility. The current scope of services (attachment S1) does not appear to address the specific capital improvements projects indicated in the approved submittal of July 28, 2006, and it is unclear from the supplemental contract that the specific projects are being addressed.

Please correct the above for submission to the Land Board for its approval at its next meeting and then re-submit. If you have any questions, please contact me at 587-2991. Thank you.

enclosure

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD
ADMINISTRATOR

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF BOATING AND OCEAN RECREATION
333 QUEEN STREET, SUITE 300
HONOLULU, HAWAII 96813

BOR-E 0165.09

May 27, 2009

To: A. Sonia Faust, Supervising Deputy Attorney General
Land/Transportation Division

Through: Laura H. Thielen, Chairperson
Department of Land and Natural Resources *LT*

From: Edward R. Underwood, Administrator *RU*
Division of Boating and Ocean Recreation

Subject: **Requesting Deputy Attorney General Review and Approval As to Form of Supplemental Contract No. 1 to Contract No. 56304 Between the STATE and Arnold T. Okubo & Associates, Inc.**

Attached are two (2) original Supplemental Contract No. 1 to Contract No. 56304 between the STATE and Arnold T. Okubo & Associates, Inc. for your review and approval as to form. The original contract No. 56304 was executed on July 20, 2007, with the contract start and end dates of July 20, 2007 and June 30, 2009, respectively.

We would like to exercise the first of two options to extend the original contract for 3 years beyond the original end date of June 30, 2009, as stipulated in Section D.2. Term of Contract. in Contract No. 56304. This option is being exercised due to construction contract delays which will require services during construction as part of the original contract requirements beyond June 30, 2009. There are no additional costs, services or modification of any of the original terms of Contract No. 56304, other than extension of the term of contract.

We believe that the Chairperson is authorized to sign this Supplemental Contract No. 1, as the option to extend the contract was stipulated in Contract No. 56304; and authorization to hire a consultant and to sign the necessary documents for this project and other individual projects were approved by the Board of Land and Natural Resources on July 28, 2006.

Please review and approve as to form the attached Supplemental Contract No. 1, and call Ms. Andrea Kualapai of the Engineering Branch at 587-0175 when it is ready to be picked up.

Should you have any questions or require additional information, please call Mr. Eric Yuasa, DOBOR Engineering Branch Head at 587-0122.

LINDA LINGLE
GOVERNOR OF HAWAII



12046
LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD
ADMINISTRATOR

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

DIVISION OF BOATING AND OCEAN RECREATION
333 QUEEN STREET, SUITE 300
HONOLULU, HAWAII 96813

BOR-E 0165.09

May 20, 2009

To: A. Sonia Faust, Supervising Deputy Attorney General
Land/Transportation Division

Through: Laura H. Thielen, Chairperson
Department of Land and Natural Resources *LT*

From: Edward R. Underwood, Administrator *ERU*
Division of Boating and Ocean Recreation

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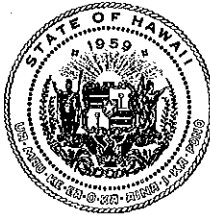
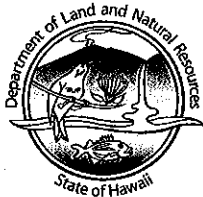
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LINDA LINGLE
GOVERNOR OF HAWAII



1-D-09-07-15
09/11/09
LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF BOATING AND OCEAN RECREATION
333 QUEEN STREET, SUITE 300
HONOLULU, HAWAII 96813

BOR-E 0165.09

May 27, 2009

To: A. Sonia Faust, Supervising Deputy Attorney General
Land/Transportation Division

Through: Laura H. Thielen, Chairperson
Department of Land and Natural Resources

From: Edward R. Underwood, Administrator
Division of Boating and Ocean Recreation

Subject: **Requesting Deputy Attorney General Review and Approval As to Form of Supplemental Contract No. 1 to Contract No. 56304 Between the STATE and Arnold T. Okubo & Associates, Inc.**

2009 JUN - 1 P 1:33
LAND/TRANS. DIV.
DEPARTMENT OF
ATTORNEY GENERAL

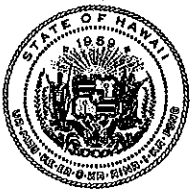
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Should you have any questions or require additional information, please call Mr. Eric Yuasa, DOBOR Engineering Branch Head at 587-0122.



STATE OF HAWAII

SUPPLEMENTAL CONTRACT NO. 1
TO CONTRACT NO. 56304

(Insert contract number or other identifying information)

This Supplemental Contract No. _____, executed on the respective dates indicated below, is effective as of June 29, 2009, between the THE BOARD OF LAND AND NATURAL RESOURCES, State of Hawaii

(Insert name of state department, agency, board or commission)

("STATE"), by its CHAIRPERSON,
(Insert title of state officer executing contract)

(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is 1151 PUNCHBOWL STREET, ROOM 130, HONOLULU, HAWAII 96813, and Arnold T. Okubo & Associates, Inc. ("CONTRACTOR"),

a corporation
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the CONTRACTOR)

under the laws of the State of Hawaii, whose business address and federal and state taxpayer identification numbers are as follows: 94-529 Ukee Street, Suite 107, Waipahu, Hawaii, 96797 Federal I.D. No. 99-0224769, State I.D. No. W20355890-01

RECITALS

A. WHEREAS, the STATE and the CONTRACTOR entered into Contract No. 56304

(Insert contract number or other identifying information)

dated July 20, 2007, which was amended by Supplemental Contract No(s). _____
dated _____, _____, which was amended by Supplemental Contract No(s). _____
dated _____, _____, which was amended by Supplemental Contract No(s). _____
dated _____, _____ (hereafter collectively referred to as "Contract") whereby the CONTRACTOR agreed to provide the goods or services, or both, described in the Contract; and

B. WHEREAS, the parties now desire to amend the Contract.

NOW, THEREFORE, the STATE and the CONTRACTOR mutually agree to amend the Contract as follows: (Check Applicable box(es))

- ☐ Amend the SCOPE OF SERVICES according to the terms set forth in Attachment-S1, which is made a part of the Contract.
- ☐ Amend the COMPENSATION AND PAYMENT SCHEDULE according to the terms set forth in Attachment-S2, which is made a part of the Contract.
- ☒ Amend the TIME OF PERFORMANCE according to the terms set forth in Attachment-S3, which is made a part of the Contract.
- ☐ Amend the SPECIAL CONDITIONS according to the terms set forth in Attachment-S6 SUPPLEMENTAL SPECIAL CONDITIONS, which is made a part of the Contract.
- ☐ Recognize the CONTRACTOR'S change of name.

FROM: _____

TO:

As set forth in the documents attached hereto as Exhibit _____, and incorporated herein.

A tax clearance certificate from the State of Hawaii ☐ is ☒ is not required to be submitted to the STATE prior to commencing any performance under this Supplemental Contract.

A tax clearance certificate from the Internal Revenue Service ☐ is ☒ is not required to be submitted to the STATE prior to commencing any performance under this Supplemental Contract.

The entire Contract, as amended herein, shall remain in full force and effect.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE

(Signature)

(Print Name)

(Print Title)

(Date)

CONTRACTOR

CORPORATE SEAL
(If available)

Arnold T. Okubo & Assoc., Inc.

(Name of Contractor)

Arnold T. Okubo

(Signature)

Arnold T. Okubo

(Print Name)

President

(Print Title)

May 13, 2009

(Date)

APPROVED AS TO FORM:

Deputy Attorney General

* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.

ARNOLD T. OKUBO AND ASSOCIATES, INC.

I, Arnold T. Okubo, Secretary of Arnold T. Okubo and Associates, Inc. Corporation, a Hawaii corporation, do hereby certify that the following is a full, true and correct copy of a resolution duly adopted by the Board of Directors of said Corporation, at its meeting duly called and held at the office of the Corporation, 94-529 Ukee Street, Suite 107, Waipahu, Hawaii 96797 on the 8th day of May 2009, at which a quorum was present and acting throughout; and that said resolution has not been modified, amended or rescinded and continues in full force and effect:

“RESOLVE that any individual at the time holding the position of President or Vice President, be, and each of them hereby is, authorized to execute on behalf of the Corporation any bid, proposal or contract for the sale or rental of the products of the Corporation or for services to be performed by the Corporation, and execute any bond required by any such bid, proposal, or contract with the United States Government or the State of Hawaii or the City and County of Honolulu, or any County or Municipal Government or said State, or any department or subdivision of any of them.”

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Arnold T. Okubo and Associates, Inc. this 8th day of May 2009.



Secretary

President - Arnold T. Okubo
Treasurer - Arnold T. Okubo
Secretary - Arnold T. Okubo

ADDRESS OF THE ABOVE OFFICERS:
94-558 Kiilani Street
Mililani Town, Hawaii 96789



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF Hawaii)
) SS.
City and COUNTY OF Honolulu)

On this 13th day of May, 2009 before me appeared
Arnold T. Okubo and _____, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/~~she~~/they is/~~are~~
President _____ and Secretary _____ of
Arnold T. Okubo & Associates, Inc., the
CONTRACTOR named in the foregoing instrument, and that he/~~she~~/they is/~~are~~ authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/~~she~~/they executed said
instrument as the free act and deed of the CONTRACTOR.

(Notary Stamp or Seal)

(Signature)

LINDY ARTITA

(Print Name)

Notary Public, State of Hawaii

My commission expires: JUL 02 2012

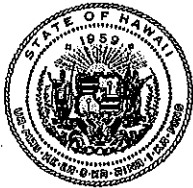
Doc. Date: May 13, 2009 # Pages: 22
Notary Name: LINDY ARTITA 1st Circuit
Doc. Description: Supplemental Contract No 1
to Contract No. 56304 for Arnold T.
Okubo & Associates Inc.

(Notary Stamp or Seal)

Notary Signature

Date

NOTARY CERTIFICATION



STATE OF HAWAII
**CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION**

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of Arnold T. Okubo & Associates, Inc., CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is ☒ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

* Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By

(Signature)

Print Name

Arnold T. Okubo

Print Title

President

Name of Contractor

Arnold T. Okubo & Associates, Inc. 94-529 Ukee St. Ste. 107, Waipahu, Hawaii 96797

Date



STATE OF HAWAII

TIME OF PERFORMANCE

- 3.1 Time Extension. The STATE, pursuant to terms of Contract No. 56304, exercises the first of 2 option periods to extend the completion date of this Contract by three years until June 29, 2012. The extension period is required to accommodate Contract performance for design and services during construction that will extend beyond the original Contract end date of June 30, 2009.

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period

not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of

supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

(A) Changes in the work within the scope of the Contract; and

(B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.

- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
- e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
- f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
- g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
- h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
- i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.

20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
- (2) Method of delivery; or
- (3) Place of delivery.

- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or
 - (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or

- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.



CONTRACT FOR PROFESSIONAL SERVICES

This Contract, executed on the respective dates indicated below, is effective as of JUL 20 2007, between THE BOARD OF LAND AND NATURAL RESOURCES,
(Insert name of state department, agency, board or commission)
 State of Hawaii ("STATE"), by its CHAIRPERSON,
(Insert title of person signing for State)
 (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),
 whose address is 1151 PUNCHBOWL STREET, ROOM 130, HONOLULU, HAWAII 96813
 and Arnold T. Okubo & Associates, Inc.
 ("CONTRACTOR"), a corporation
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
 under the laws of the State of Hawaii, whose business address and federal
 and state taxpayer identification numbers are as follows: 94-529 Ukee Street, Suite 107, Waipahu,
Hawaii, 96797 Federal I.D. No. 99-0224769, State I.D. No. W20355890-01

RECITALS

A. The STATE desires to retain and engage the CONTRACTOR to provide the services described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said services.

B. This Contract is for professional services as defined in section 103D-104, Hawaii Revised Statutes ("HRS").

C. Money is available to fund this Contract pursuant to:

(1) Act 178, SLH 2005 Item H-11

(Identify state sources)

or (2)

(Identify federal sources)

or both, in the following amounts: State \$ 150,000.00
 Federal \$ _____

D. Pursuant to 103D-304HRS AND 171-6HRS, the STATE
(Legal authority to enter into this Contract)

is authorized to enter into this Contract.

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. **Scope of Services.** The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the services set forth in Attachment-S1, which is made a part of this Contract.

2. **Term of Contract.** This Contract starts on JUL 20 2007
 and ends on June 30, 2009 with 2 option(s) to extend
(Insert no. of options)
 for 3 yrs. each. References.
(Insert no. of mos. or yrs.)

3. **Compensation.** The CONTRACTOR shall be compensated for services rendered and costs incurred under this Contract for a total amount not to exceed One Hundred Fifty Thousand
and No/100----- DOLLARS

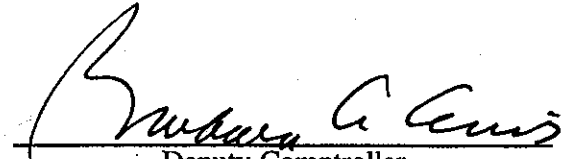
CONTRACT CERTIFICATION

I hereby certify that there is an appropriation balance in the account(s) named below for this Contract No. 56304
with ARNOLD T. OKUBO & ASSOCIATES, INC.

APPROPRIATION	(*)	AMOUNT
631 B 05. 421. C Kawaihae Harbor Imp, HI-Des		150,000.00

* Federal funds, as received. Sec. 103D-309, H.R.S.

Dated September 18, 2007.


Deputy Comptroller
State of Hawaii

(\$ 150,000.00), including approved costs incurred and taxes, according to the Compensation and Payment Schedule set forth in Attachment-S2, which is made a part of this Contract.

4. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

5. Standards of Conduct Declaration. The Standards of Conduct Declaration by the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of One Hundred and No/100 DOLLARS (\$ 100.00) per day, in accordance with paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in this Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in this Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE

(Signature)

ALLAN A. SMITH

(Print Name)

INTERIM CHAIRPERSON

(Print Title)

(Date)

CONTRACTOR

ARNOLD T. OKUBO & ASSOCIATES, INC.

(Name of Contractor)

(Signature)

ARNOLD T. OKUBO

(Print Name)

PRESIDENT

(Print Title)

(Date)

CORPORATE SEAL

(If available)

APPROVED AS TO FORM:

Deputy Attorney General

* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF Hawaii)
City and COUNTY OF Honolulu) SS.

On this 06 day of July, 2007 before me appeared
Arnold T. Okubo and _____, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/~~are~~
President and Secretary of
Arnold T. Okubo & Associates, Inc., the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said
instrument as the free act and deed of the CONTRACTOR.

(Notary Seal)

(Signature)
Lindy Artita
(Print Name)
Notary Public, State of Hawaii
My commission expires: 07/02/08



STATE OF HAWAII

CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of Arnold T. Okubo & Associates, Inc., CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is ☒ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

CONTRACTOR

By

(Signature)

Print Name

Print Title

Name of Contractor

Date

Arnold T. Okubo

Arnold T. Okubo

President

ARNOLD T. OKUBO & ASSOCIATES, INC.

94-529 Ukee St., Ste. 107

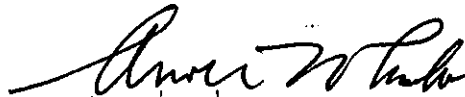
Waipahu, Hawaii 96797

ARNOLD T. OKUBO AND ASSOCIATES, INC.

I, Arnold T. Okubo, Secretary of Arnold T. Okubo and Associates, Inc. Corporation, a Hawaii corporation, do hereby certify that the following is a full, true and correct copy of a resolution duly adopted by the Board of Directors of said Corporation, at its meeting duly called and held at the office of the Corporation, 94-529 Ukee Street, Suite 107, Waipahu, Hawaii 96797 on the 6th day of July 2007, at which a quorum was present and acting throughout; and that said resolution has not been modified, amended or rescinded and continues in full force and effect:

“RESOLVE that any individual at the time holding the position of President or Vice President, be, and each of them hereby is, authorized to execute on behalf of the Corporation any bid, proposal or contract for the sale or rental of the products of the Corporation or for services to be performed by the Corporation, and execute any bond required by any such bid, proposal, or contract with the United States Government or the State of Hawaii or the City and County of Honolulu, or any County or Municipal Government or said State, or any department or subdivision of any of them.”

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Arnold T. Okubo and Associates, Inc. this 6th day of July, 2007.



Secretary

President - Arnold T. Okubo
Treasurer - Arnold T. Okubo
Secretary - Arnold T. Okubo



STATE OF HAWAII

SCOPE OF SERVICES

- 1.1 General. The CONTRACTOR shall provide professional engineering services on an "as-required" basis, including, but not limited to conducting field investigations, reviewing existing plans and preparing complete contract drawings, specifications, cost estimates, schedules, studies, reports and other items relating to maintaining, repairing and replacing facilities at Kawaihae Small Boat Harbor facilities.
- 1.2 Review by the State. The Division of Boating and Ocean Recreation Engineering Branch and other Department of Land and Natural Resources agencies (STATE) will review and discuss the proposed design features, and compliance with state policies and other requirements to further the prosecution of the project assignment with the least amount of delay.
- 1.3 Data and Work to be Furnished by the State. The STATE may furnish at no or reasonable cost to the CONTRACTOR any plans or records that the STATE determines will aid in accomplishing the work for this project.
- 1.4 "As Required" Basis. The services shall be provided by the CONTRACTOR on an "as required" basis, to be determined by the STATE at its sole discretion. Project assignments and actual scope of work shall be determined by the STATE. The CONTRACTOR shall be available to discuss the Project assignments and associated scope of work with the STATE within thirty-six (36) hours after being notified by the STATE that the CONTRACTOR'S services are required.
- 1.5 Subcontracting. The STATE will reimburse the CONTRACTOR for any approved subcontractor work at a rate of 1.1 times the subcontractor's cost, provided, however, that the amounts charged by the subcontractors to the CONTRACTOR shall not entitle the CONTRACTOR to any additional monies from the STATE, over and above the amount the STATE and the CONTRACTOR initially agreed is payable to the CONTRACTOR for the Project assignment.
- 1.6 Work Orders. Payment for individual Project assignments or phases of such Project assignments shall be made with separate work orders. Work orders will be issued for each Project assignment or phase thereof only after the parties hereto mutually agree to the maximum total compensation to be paid to the CONTRACTOR for each Project assignment or phase thereof based on the rates shown in the Attachment-S2 (Compensation and Payment Schedule) of this Contract. If the parties hereto are unable to agree on total compensation for the Project assignment or phase thereof, the STATE shall have the right to accomplish the Project assignment by other means, including without limitation, the right to retain another engineering firm or other firm to complete the Project assignment. The CONTRACTOR shall submit invoices or bills to the STATE for each Project assignment. The STATE is willing to accept bills or invoices on a monthly basis for Project assignments requiring more than a month to complete, subject to the STATE'S approval at its sole discretion. The total amount for the work orders that can be issued under this CONTRACT shall not exceed the sum of ONE HUNDRED AND FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00)
- 1.7 No Minimum Amount of Services. Since the CONTRACTOR'S services are to be provided on an "as required" basis, the amount of services requested by the STATE may be less than presently anticipated. The STATE makes no guarantee whatsoever as to the minimum amount of



STATE OF HAWAII

SCOPE OF SERVICES

CONTRACTOR'S services that will be required under this Contract and no fee adjustment will be made if the amount of services requested is less than anticipated.

1.8 Work by Contractor. The CONTRACTOR shall provide all the required engineering services required by the STATE including, but not limited to, conducting investigations; providing recommendations; preparing plans, technical specifications, and cost estimates; and coordinating the services required to complete the work specified for the Project assignment. More specifically, the CONTRACTOR'S duties shall include, but not be limited to, the following:

- (a) Conducting field investigations.
- (b) Reviewing "As-Built" plans and records on file with the STATE.
- (c) Coordinating all activities with the STATE and other pertinent State personnel and other appropriate organizations, as required.
- (d) Providing sketches of affected components.
- (e) Performing professional engineering analyses of existing situations ("Troubleshooting").
- (f) Providing professional recommendations on procedures proposed by the STATE.
- (g) Providing final plans, technical specifications, and certain proposal documents fully describing the work required for incorporation into relevant contract documents.
- (h) Providing cost estimates as requested by the STATE.
- (i) Providing professional advice, particularly during bidding and construction phases, if requested by the STATE.

1.9 Stages of Work. The work required for a typical Project assignment shall be classified into three (3) basic stages, namely:

- (A) Preliminary Design
- (B) Pre-Final Design
- (C) Final Design
- (D) Bidding and Construction Administration Phase

At the STATE'S sole discretion, the STATE may delete the requirements for a preliminary and/or a semi-final submission in order to expedite the completion of the project.

A. Preliminary Design. The preliminary design shall include plans and outline specifications showing the existing facilities with notes on the condition, problems and recommended repairs or improvements for each system.

The CONTRACTOR shall submit four (4) sets of the preliminary plans and cost estimates to the STATE for the STATE'S review and approval. The contents of the plans will be discussed at meetings between CONTRACTOR and the STATE. Future plans and operational requirements will be discussed along with the need for repairs and improvements. The STATE shall establish guidelines on the degree of repairs and improvements to be incorporated in the pre-final plans.

B. Pre-Final Design. Upon receipt of the preliminary design submittals approved by the STATE, the CONTRACTOR shall prepare the pre-final design.



STATE OF HAWAII

SCOPE OF SERVICES

The pre-final design submittal shall include preliminary plan checksets, outline specifications, narrative report as required, and cost estimates of the proposed repairs.

Upon the completion of the pre-final design, the CONTRACTOR shall submit two (2) sets of said plans, specifications, cost estimates, and narrative report, as required, to the STATE for STATE'S review and approval.

The STATE, upon completing its review of the aforementioned submission, may approve said submission as submitted, approve it subject to such revisions or changes as desired by the STATE, or may withhold approval if there is insufficient information to warrant approval or if the changes are extensive.

- C. Final Design. The CONTRACTOR shall make all changes and revisions required by the STATE in connection with the aforementioned pre-final submission and shall furnish the STATE with the revised, corrected and completed plans, specifications, cost estimates, and narrative report, as required.

The final submission shall consist of specifications, tracings, detailed cost estimates, notes, computations, and other materials required to be furnished to the STATE by the CONTRACTOR.

The CONTRACTOR shall prepare all full size final plans on a computer aided drafting program MicroStation compatible format. Substitution of a CADD program must be approved by the STATE. The plot paper will be vellum, bond or mylar and will be specified by the STATE.

Specifications shall be prepared with the Microsoft Word and submitted on 20# bond paper (unbound). Submit the original hard copies (prints) and digital files (.TIF or .JPG format) of all photographs taken for the project.

Final plans and specifications shall be submitted both in hard copy and electronically on CD.

The final submission shall be considered final only after all documents have been approved in writing by the STATE.

- D. Bidding and Construction Administration Phase. The STATE shall print all bid documents, advertise for bids and award the contract for construction.

The CONTRACTOR shall provide Bidding and Construction services as described below and as requested by the STATE.

The CONTRACTOR shall be available during the time the STATE advertises for bids to complete these repairs, to answer questions from prospective bidders, particularly those concerning the design and plans. The CONTRACTOR shall review and make recommendations regarding requests to use substitute or alternate materials, equipment and/or methods submitted by prospective bidders, including the successful bidder.

The CONTRACTOR shall review and make recommendations for approval of materials, schedules, shop drawings and other submittals by the Construction Contractor during the construction phase.

The CONTRACTOR shall, when instructed by the STATE, visit the construction jobsite to familiarize themselves with the progress and quality of work and to determine in general if the work is proceeding in accordance with the Final Plans and specifications which were approved by the STATE. Based on the CONTRACTOR'S on-site



STATE OF HAWAII

SCOPE OF SERVICES

observations, it shall advise the STATE on actions the CONTRACTOR recommends to protect the STATE from visible defects and deficiencies in the work of the Construction Contractor. The STATE will be responsible for construction management and day-to-day inspection of the construction jobsite; provided, however, that if the STATE suffers any loss or damage as a result of the CONTRACTOR'S negligent action or omission in connection with the Project including, without limitation, the CONTRACTOR'S recommendations thereto, paragraph 7 (Indemnification and Defense) of the General Conditions shall apply.

The STATE shall perform tests of construction materials when reasonably requested by the CONTRACTOR.

The CONTRACTOR shall, when requested by the STATE, accompany the STATE on final inspections and shall advise the STATE as to whether or not the Project assignment was completed in accordance with the Final Plans and specifications for the Project assignment, and if not, to fully advise the STATE of any deficiencies and the steps and work necessary to correct such deficiencies which must be taken by the Construction Contractor.

- 1.10 Rights-of-Entry. The STATE will provide the CONTRACTOR with all necessary rights-of-entry for purposes of surveying or for gathering data and information necessary for the performance of this CONTRACT. The CONTRACTOR shall notify the STATE as early as possible of all necessary rights-of-entry required.
- 1.11 Consultation. During the course of the work, the CONTRACTOR shall be available for consultation on this project at no extra cost to the STATE until the completion of construction. After the completion of construction of the project, the CONTRACTOR shall be compensated for subsequent consultation at the rate provided in Exhibit A.
- 1.12 Contractor's Responsibility. The CONTRACTOR covenants and agrees to accept responsibility and accountability for the accuracy, completeness, and adequacy of the work. All designs, plans, or reports prepared by the CONTRACTOR shall be approved by the STATE. It shall be clearly understood that the approval of such designs, plans, or reports by the STATE shall not be construed so as to relieve the CONTRACTOR of the responsibility of correcting any errors or discrepancies found in said designs, plans or reports which may become apparent or should have become apparent to the CONTRACTOR after approval has been given, nor shall such approval be construed so as to relieve the CONTRACTOR of the responsibility for conforming to all applicable design standards and criteria, laws, general plans, and established professional engineering and planning principles and practices. Corrective work required of the CONTRACTOR shall be performed by the CONTRACTOR at no cost to the STATE.
 - A. Whenever the STATE furnishes information for the guidance of the CONTRACTOR's work and/or provides actual designs and plans for portions of the project that are to be incorporated into the CONTRACTOR's work, it is agreed that the CONTRACTOR will be responsible to verify the accuracy and adequacy of such information and/or designs and plans furnished, except as otherwise specified herein.



STATE OF HAWAII

SCOPE OF SERVICES

- B. The CONTRACTOR shall not take advantage of any apparent errors or omissions in the information and/or designs and plans furnished by the STATE. In the event the CONTRACTOR discovers such an error or omission, the CONTRACTOR shall immediately notify the STATE in writing. The STATE will then take such steps or correct any errors or omissions as may be deemed necessary.
 - C. Any additional work required of the CONTRACTOR after the STATE's approval has been given because of the aforementioned errors or discrepancies, or omissions in the designs, plans, or reports of the CONTRACTOR, shall be performed by the CONTRACTOR at no further cost to the STATE.
 - D. The CONTRACTOR agrees to perform the work in a professional manner with a professional attitude that shall involve a personal desire to place the STATE'S interest above other considerations and to accept the professional responsibility for the services to be rendered.
- 1.13 Information Furnished. The STATE will furnish the CONTRACTOR all pertinent information available to the STATE and pertaining to the project in order that the CONTRACTOR may be cognizant of the requirements of the STATE.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

- 2.1 Compensation and Payment for Services. The CONTRACTOR agrees to perform such services as described in Attachment-S1 (Scope of Services), and the STATE, in consideration thereof, agrees to pay the CONTRATOR an amount not to exceed ONE HUNDRED AND FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00).

Payment for the CONTRACTOR'S services shall be made at the rate of 2.87 times the payroll rates below, based on the actual number of hours expended on each Project assignment:

a.	Principal Engineer	\$ 42.00/hr.
b.	Sr. Engineer/Diver	\$ 44.00/hr.
c.	Sr. Project Engineer	\$ 36.00/hr.
d.	Sr. AutoCAD Technician	\$ 26.00/hr.
e.	Jr. AutoCAD Technician	\$ 21.00/hr.
f.	Specification Writer	\$ 36.00/hr.
g.	Cost Estimator	\$ 36.00/hr.

The hourly rates payable to the CONTRACTOR set forth above shall be inclusive of direct labor, overhead, profit, and all other expenses not deemed direct reimbursable costs by the STATE, in its sole discretion, and these rates shall be held fixed for the term of this Contract. Payment for CONTRACTOR'S services beyond the term of this Contract will be based on agreed rates of pay.

- 2.2 Contractor's Reimbursable Costs. The CONTRACTOR will be eligible for direct reimbursement on certain costs such as transportation costs for neighbor island Project assignments, printing, map reproduction, photographic supplies and processing, if such costs are determined to be direct reimbursable costs by the STATE, at the STATE'S sole discretion. The CONTRACTOR shall support such claims for reimbursement by copies of receipts, expense account records, invoices or other documentation acceptable to the STATE. Subject to the STATE'S final approval, allowable transportation costs for neighbor island Projects may normally include air fare, airport parking, meal allowance, reasonable sleeping accommodations and reasonable auto rental. The CONTRACTOR shall obtain the STATE'S approval prior to incurring neighbor island transportation costs.

If approved by the STATE, the CONTRACTOR shall be reimbursed for reproduction costs of the plans and specifications in excess of the number of sets specified in the various phase for the STATE'S review. The CONTRACTOR shall support such claims for reimbursement by copies of receipts, invoices and other documentation acceptable to the STATE.

Monthly process payments will be made to the CONTRACTOR as prescribed under Section 2.4 hereinafter.

All of the above charges are subject to the 4.712% general excise tax.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

2.3 Scope of Payment. Except as otherwise provided herein, the fee set forth in this Contract shall be deemed full compensation for all work to be performed by the CONTRACTOR under this Contract and shall cover all services, materials, supplies, equipment, overhead, profit, taxes and any other incidentals and operating expenses.

2.4 Progress Payment. As long as the services of the CONTRACTOR are being performed in a manner satisfactory to the STATE, the STATE will pay the CONTRACTOR, unless indicated otherwise in this Contract, monthly progress payments based upon the value of the services performed by the CONTRACTOR, as estimated by the CONTRACTOR and approved by the STATE.

From the total amount ascertained as payable, an amount equivalent to five percent (5%) of each progress payment will be deducted and retained by the STATE until completion of all work required under this Contract in a manner acceptable by the STATE. It is provided, however, that after fifty percent (50%) of the work has been completed, as determined by the STATE, the STATE may make any subsequent progress payments in full.

Progress payment shall not be construed as an absolute acceptance of the work done up to the time of the payments and the entire work is subject to acceptance at the time the CONTRACTOR advised the STATE that the work required under this Contract is fully completed.

2.5 Acceptance and Final Payment. Final acceptance is stipulated to mean a written notice to the CONTRACTOR of the satisfactorily fulfillment of the CONTRACT requirements. Final payment will be made only after issuance of the notice of acceptance and receipt by the STATE of a tax clearance from the State Director of Taxation verifying that the CONTRACTOR has paid all delinquent taxes levied or accrued under State Statutes. Upon acceptable completion of the CONTRACT or upon termination of this CONTRACT, the CONTRACTOR shall turn over to the STATE all tracings, drawings, specification masters, CADD drawing files in a MicroStation compatible format (Autocad acceptable), Microsoft Word, Word Perfect or ASCII document files, computations, etc., prepared or obtained by the CONTRACTOR or furnished by the STATE in connection with the work performed under this CONTRACT at no extra cost to the STATE.



STATE OF HAWAII

TIME OF PERFORMANCE

- 3.1 Completion Time. The time allotted for each project assignment and each phase thereof shall be established when the STATE makes its specific request for the CONTRACTOR'S services.
- 3.2 Time of Performance. Time is of the essence in this CONTRACT and the CONTRACTOR shall prosecute the work with due efficiency and diligence to complete the work within the specified time.
- 3.3 Time Extension. The STATE may, upon written request of the CONTRACTOR and for good cause, extend the completion date of this CONTRACT by written notice to the CONTRACTOR.
- 3.4 Conflict. If there is a conflict between this Attachment-S3 (Time of Performance) and the General Conditions, the General Conditions shall govern and control unless otherwise specified.



STATE OF HAWAII

CERTIFICATE OF EXEMPTION
FROM CIVIL SERVICE**1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development ("DHRD").***

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature)

Allan A. Smith

(Date)

07/20/07

Allan A. Smith

(Print Name)

Interim Chairperson

(Print Title)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, HRS.

(Signature)

(Date)

(Print Name)

(Print Title, if designee of the Director of DHRD)

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
 - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.

d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.

7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.

9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.

10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.

11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.

12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period

not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of

supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

(A) Changes in the work within the scope of the Contract; and

(B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.

d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.

f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.

g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.

h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.

i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.

20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

(1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;

(2) Method of delivery; or

(3) Place of delivery.

a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
- (5) Method of shipment or packing of supplies; or
- (6) Place of delivery.

- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
- c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
- d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
- e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

a. The cost or pricing data, and

b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention. The CONTRACTOR and any subcontractors shall maintain the books and records that relate to the Contract and any cost or pricing data for three (3) years from the date of final payment under the Contract.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.

36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.

STATEMENT OF ATTESTATION FOR INTERNET POSTING

I, Gayle Ito, Planner
(Name) (Title)


of the DLNR Engineering Division, do attest that in
(Agency)

(Check appropriate statement)

☒ Chapter 103D, HRS
compliance with Section 3-122-16, Hawaii Administrative Rules, the attached
procurement notice was posted to the State & County Procurement Notice System
(PNS) Website, [<http://www4.hawaii.gov/bidapps/>]

☐ Chapter 103F, HRS
compliance with Procurement Circular No. 2003-04, dated May 9, 2003, the attached
procurement notice was posted to the State & County Procurement Notice System
(PNS) Website, [<http://www4.hawaii.gov/bidapps/>]

on MAY 30 2006
(Date(s))


(Signature)

5/30/06
(Date)

Attached: Procurement notice

**NOTICE TO PROVIDERS OF PROFESSIONAL SERVICES
FOR CAPITAL IMPROVEMENT PROGRAM AND OPERATING BUDGET PROJECTS
FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES**

The Department of Land and Natural Resources (DLNR) seeks qualified professional consultants to provide planning, architectural, engineering (all disciplines), land surveying, land appraisal, landscape architectural, construction management and/or other related professional services for its Capital Improvement Program and operating budget projects during Fiscal Year 2007 (July 1, 2006 to June 30, 2007).

Capital Improvement Program (CIP) Projects

DLNR may require qualified professional services for the following CIP projects:

1. Ala Wai Watershed Flood Study, Oahu – mitigative measures
2. North Shore Wastewater Treatment Plant, Oahu – planning study
3. Honokaa Well Development, Hawaii – well development
4. Waimanalo Wastewater Treatment Plant Improvements, Oahu – plant improvements
5. Geothermal Well Plugging and Abandonment, Hawaii – well plugging and abandonment
6. Lump Sum CIP, State Park Facility Improvements, Statewide – state park improvements
7. Kokee State Park, Kauai – widening of Kokee Road
8. Haena State Park, Kauai – master plan
9. Diamond Head Visitor Orientation Center, Oahu – planning study
10. Iolani Palace State Monument, Oahu – climate control and other improvements
11. Diamond Head State Monument, Oahu – rockfall mitigation
12. Kokee-Waimea State Parks, Kauai – water system improvements
13. Waianapanapa State Park, Maui – water system improvements
14. Sand Island State Recreation Area, Oahu – water system improvements
15. Hapuna Beach State Recreation Area, Hawaii – water system improvements
16. Natural Hazard Warning Signage, Statewide – warning signage
17. Kalihi Valley Nature Park, Oahu – nature park
18. Lump Sum CIP, Improvements to Harbor Facilities, Statewide
19. Kawaihae Harbor Improvements, Hawaii – loading dock, sewer system and utility improvements
20. Waianae Boat Harbor, Oahu – improvements or replacement of existing facilities
21. Keehi Boat Harbor, Oahu – dock replacement
22. Manele Small Boat Harbor, Lanai – ferry system improvements
23. Manele Small Boat Harbor, Lanai – loading dock improvements
24. Hana Boat Ramp Improvements, Maui – revetment/ramp improvements
25. Maalaea Small Boat Harbor, Maui – ferry system improvements
26. Kaunakakai Harbor, Molokai – ferry system improvements
27. Keehi Small Boat Harbor, Oahu – pier improvements
28. Kukuila Small Boat Harbor, Kauai – loading dock improvements
29. Wailua Marina Boat Ramp Improvements, Kauai – dredging, dock improvements
30. Assessment Report for Future Dredging at Boating Facilities, Statewide – study
31. Kuliouou Stream Flood Control, Oahu – feasibility study
32. Waikiki Seawall Improvements, Oahu – seawall improvements

Operating, Repair and/or Maintenance (Operating) Projects

DLNR may require qualified professional services for operating, repair and/or maintenance projects involving the following disciplines.

1. Architecture
2. Engineering – including, but not limited to, civil, mechanical, electrical, geotechnical, structural, environmental, coastal
3. Land surveying
4. Landscape architecture
5. Planning – including water resource planning and hazard mitigation and response

6. Archaeology – including cultural assessments
7. Geothermal engineering or planning
8. Environmental consulting/planning
9. Environmental permitting – including EA/EIS preparation
10. Ground/surface water hydrology
11. Hearings officer
12. Court reporter
13. Mediation/facilitation
14. Abstracting consulting
15. Real property appraisal
16. Real estate and/or land use consulting
17. Dam safety – including analysis, inspection, remediation and regulation

Submittal Requirements

Professional registration in the State of Hawaii is required for the provision of engineering, architectural and/or surveying services. Firms or individuals interested in being considered for selection and are qualified to provide such services are invited to submit a letter of interest with a completed DPW Form 120 (rev. 6/99) or Federal Standard Form 330 to:

Mr. Peter T. Young, Chairperson
Department of Land and Natural Resources
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813

The letter of interest must indicate the specific discipline(s) of services to be provided. Interest in CIP services must also indicate specific project(s) from the CIP list above. A DPW Form 120 may be obtained at the Kalanimoku Building, Room 221, 1151 Punchbowl Street, Honolulu, downloaded from <http://www4.hawaii.gov/StateFormsFiles/dpw%20120%206-99.doc> or by calling (808) 587-0230. Facsimile submittals will not be accepted. DLNR will not be responsible for lost or misdirected mail.

Submittal Deadlines

Submittals are due to the above address by 4:30 p.m, June 23, 2006. Submittals received after the initial deadline of June 23, 2006 will be considered "Late". Qualified "Late" applicants will be considered for projects for the balance of the fiscal year by the following schedule:

Date Received

June 24, 2006 to September 15, 2006
September 16, 2006 to December 15, 2006

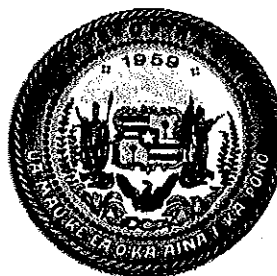
Applicant Considered Starting

October 1, 2006
January 1, 2007

No submittals will be accepted after December 15, 2006.

PETER T. YOUNG, Chairperson
Department of Land and Natural Resources

PNS Date: May 30, 2006



STATE OF HAWAII
STATE PROCUREMENT OFFICE

CERTIFICATE OF VENDOR COMPLIANCE

Pursuant to Section 103D-310, HRS, and Section 3-122-112, HAR, this document presents the compliance status of the vendor identified below on the issue date with respect to certificates required from the Hawaii Department of Taxation (DOTAX), the Internal Revenue Service, the Hawaii Department of Labor and Industrial Relations (DLIR), and the Hawaii Department of Commerce and Consumer Affairs (DCCA).

Vendor Name: **ARNOLD T. OKUBO & ASSOCIATES, INC.**

DBA/Trade Name: **ARNOLD T. OKUBO & ASSOCIATES, INC.**

Issue Date: **06/29/2007**

Status: **Compliant**

Hawaii Tax#: W20355890-01

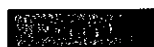
FEIN/SSN#: 99-0224769

UI#: 0000147818

DCCA FILE#: 55626

Status of Compliance for this Vendor on issue date:

Form	Department(s)	Status
A-6	Hawaii Department of Taxation	Compliant
	Internal Revenue Service	Compliant
COGS	Hawaii Department of Commerce & Consumer Affairs	Compliant
LIR27	Hawaii Department of Labor & Industrial Relations	Compliant



Status Legend:

Status	Description
Exempt	The entity is exempt from this requirement
Compliant	The entity is compliant with this requirement
Pending	The entity is compliant with DLIR requirement
Submitted	The entity has applied for the certificate but it is awaiting approval
Not Compliant	The entity is not in compliance with the requirement and should contact the issuing agency for more information

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Engineering Division
Honolulu, Hawaii

July 28, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Permission to Hire Consultants for DLNR CIP Projects

The Engineering Division and other user divisions desire to engage consultants to provide various professional services for the Capital Improvements Program (CIP) projects indicated and described on the attached list. The General Appropriations Act of 2005 and Supplemental Appropriations Act of 2006 authorize these projects. The list is arranged by program area.

RECOMMENDATION:

That the Board of Land and Natural Resources authorize the hiring of consultants for the projects indicated and authorizes the Chairperson to sign the necessary documents pertaining to the individual projects, subject to the release of funds by the Governor.

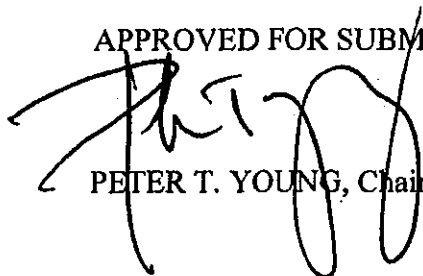
Respectfully submitted,



ERIC T. HIRANO
Chief Engineer

Attachment

APPROVED FOR SUBMITTAL:



PETER T. YOUNG, Chairperson

Approved by the Board of
Land & Natural Resources
at the meeting held on

JUL 28 2006

ITEM L-4

DLNR CIP Projects
General Appropriations Act of 2005 and Supplemental Appropriations Act of 2006

Island	Job No.	Project Title	Description
Engineering Division – Water and Land Development			
Oahu	G54	Ala Wai Watershed Flood Study	Plans, design and construction to investigate conditions and provide mitigative measures to alleviate flooding in the Ala Wai watershed, including the upper reaches of Makiki, Manoa and Palolo valleys. This project is deemed necessary to qualify for Federal aid financing and/or reimbursement.
Oahu	J40	North Shore Wastewater Treatment Plant	Plans for studies to determine location and treatment alternatives supported by the community, methods of alleviating cesspool leaching, and other relevant issues.
Hawaii	G76	Honokaa Well Development	Design and construction for well development, including pump installation, controls, connecting pipeline and related improvements.
Oahu	J32	Waimanalo Wastewater Treatment Plant Improvements	Construction for incremental improvements to meet water quality standards, including injection wells, filter structures and filter cells. Disinfection mixing and contact chamber, dissolved air flotation thickener, clarifiers, pump station, flood proofing, equalization basin system upgrades, tertiary treatment, and other related work.
Hawaii	J38A	Geothermal Well Plugging and Abandonment, Puna	Design and construction to plug and abandon two geothermal wells and restore well sites.
Division of State Parks – Park Administration and Operation			
Statewide	Various	Lump Sum CIP – State Parks Facility Improvements	Plans, design, and construction for state parks improvements, statewide, and other related improvements.
Kauai	F46C	Kokee State Park	Design and construction for the widening of Kokee Road.
Kauai	F74C	Haena State Park	Plans for a master plan for the development of Haena State Park to ensure the preservation of resources and enhance historical and cultural features.
Oahu	F37C	Diamond Head Visitor Orientation Center	Plans for the Diamond Head Orientation Center.
Oahu	F11A	Iolani Palace State Monument	Design and construction for air conditioning, climate control and related improvements to preserve historic and cultural artifacts.
Oahu	F37A	* Diamond Head State Monument	Construction of rockfall mitigation measures and related improvements.
Kauai	F46B	Kokee-Waimea Canyon State Parks	Design and construction of water system improvements and related work.
Maui	F55A	Waianapanapa State Park	Design and construction of water system improvements and related work.
Oahu	F70A	Sand Island State Recreation Area	Design and construction of water system improvements and related work.
Hawaii	F75A	Hapuna Beach State Recreation Area	Design and construction of water system improvements and related work.
Statewide	H50A	Natural Hazard Warning Signage	Construction for natural hazard warning signage.
Oahu	H92A	Kalihi Valley Nature Park	Plans, design, and construction to build a Kalihi Nature Park on a one hundred-acre parcel in the back of Kalihi Valley.

Division of Boating and Ocean Recreation			
Statewide	Various	Lump Sum CIP – Improvements to Harbor Facilities	Plans, design, and construction for improvements at various boating facilities to include piers, loading docks, utilities, boat ramps, restrooms, paving, dredging, elimination of cesspools, and other related work.
Hawaii	B10	Kawaihae Harbor Improvements	Design and construction for sewer system and utilities improvements, and the installation of a loading dock.
Oahu	B75	Waianae Boat Harbor	Design and construction to improve or replace existing facilities.
Oahu	B72A	Keehi Boat Harbor	Design and construction for the replacement of docks and related work.
Lanai	B31B	Manele Small Boat Harbor – Ferry System Improvements	Plans for facility improvements to support ferry system operations at Manele Small Boat Harbor, Lanai. This project is deemed necessary to qualify for federal aid financing and/or reimbursement.
Lanai	B31A	Manele Small Boat Harbor Loading Dock Improvements	Design and construction for the reconstruction of loading dock and related work. This project is deemed necessary to qualify for federal aid financing and/or reimbursement.
Maui	B43A	Hana Boat Ramp Improvements	Design and construction for the reconstruction of the boat ramp revetment, approach area and other related work.
Maui	B45A	Maalaea Small Boat Harbor – Ferry System Improvements	Construction for facility improvements to support ferry system operations at Maalaea Small Boat Harbor, Maui. This project is deemed necessary to qualify for federal aid financing and/or reimbursement.
Molokai	B61A	Kaunakakai Harbor – Ferry System Improvements	Construction for facility improvements to support ferry system operations at Kaunakakai Harbor, Molokai. This project is deemed necessary to qualify for federal aid financing and/or reimbursement.
Oahu	B72B	Keehi Small Boat Harbor Pier Improvements	Design and construction for the replacement of piers and related work.
Kauai	B93A	Kukuiula Small Boat Harbor Improvements	Design and construction for the reconstruction of the loading dock and related work. This project is deemed necessary to qualify for federal aid financing and/or reimbursement.
Kauai	B98A	Wailua Marina Boat Ramp Improvements	Design and construction for dredging, dock improvements and related work. This project is deemed necessary to qualify for federal aid financing and/or reimbursement.
Statewide	B99A	Assessment Report for Future Dredging at Boating Facilities	Plans for a report to assess boating facilities that require regular dredging and identify intervals, qualities, permitting issues and cost estimates. This project is deemed necessary to qualify for federal aid financing and/or reimbursement.
Engineering – Prevention of Natural Disasters			
Oahu	G83	Kuliouou Stream Flood Control	Plans for a feasibility study to determine the viability of the Kuliouou Stream flood control project.
Land Division – Public Lands Management			
Oahu	E58	Waikiki Seawall Improvements	Plans, design, and construction for the resurfacing of the seawall and installation of railings along Waikiki's gold coast. This project is deemed necessary to qualify for federal aid financing and/or reimbursement.